

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
)
ITT EDUCATIONAL SERVICES, INC., *et al.*¹) Case No. 16-07207-JMC-7A
)
Debtors.) Jointly Administered

**TRUSTEE'S MOTION FOR AUTHORITY
TO DESTROY RECORDS MAINTAINED BY GRM
INFORMATION MANAGEMENT SERVICES, LLC AND TO APPROVE
AGREEMENT FOR THE COST ASSOCIATED WITH THE DESTRUCTION**

Deborah J. Caruso, the chapter 7 trustee in this case (the "Trustee"), by counsel, requests entry of an order, pursuant to 11 U.S.C. §§ 105 and 503, authorizing the Trustee to destroy records maintained by GRM Information Management Services, LLC ("GRM") and to approve a certain agreement with GRM for the costs associated with the destruction on the following grounds:

I. JURISDICTION

1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for relief are sections 105 and 503 of Title 11 of the United States Code (the "Bankruptcy Code").

II. BACKGROUND

4. On September 16, 2016 (the "Petition Date"), ITT Educational Services, Inc. ("ITT"), ESI Service Corp. ("ESI") and Daniel Webster College, Inc. ("DWC," and together

¹ The debtors in these cases, along with the last four digits of their respective federal tax identification numbers are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

with ITT and ESI, the “Affiliated Debtors”) filed voluntary petitions for relief under chapter 7 of the Bankruptcy Code. The Trustee was appointed interim trustee in each of the Affiliated Debtors’ bankruptcy cases on the Petition Date pursuant to section 701(a)(1) of the Bankruptcy Code in each of the Affiliated Debtors’ bankruptcy cases on the Petition Date, and in accordance with section 702(d) of the Bankruptcy Code, became the permanent case trustee on November 1, 2016 following the conclusion of the meeting of creditors held pursuant to section 341(a) of the Bankruptcy Code.

5. On October 4, 2016, the Court entered its *Order Granting Motion for Joint Administration of Chapter 7 Cases* [Docs 221 & 222], directing the Affiliated Debtors’ bankruptcy cases to be jointly administered for procedural purposes only.

6. Pursuant to the *Order Granting Trustee’s Motion for authority to Allow Access to the Affiliated Debtors’ Books, Records and Other Documents* [Doc 217], the Trustee engaged GRM to image, copy, collect, cull, organize, manage and otherwise process the Affiliated Debtors’ records.

7. Previously, GRM was maintaining approximately 35,000 boxes of students records at its location in Indianapolis, Indiana (the “Physical Academic Records”). The Physical Academic Records included all student records from campus locations other than those from campuses located in Indiana and Massachusetts. The Physical Academic Records were destroyed pursuant to the terms of a certain settlement agreement between the Trustee and

certain state agencies² and the Court's *Order Granting Trustee's Motion for Authority to Destroy Academic Records and to Pay Costs Associated with Destruction* [Doc 3924].

8. Currently, GRM is maintaining approximately 45,000 boxes of records retrieved from the ITT headquarters, campuses and storage facilities, and summarized as follows:

- (a) 33,629 boxes containing general company records, with an estimated 6,000 pounds of data tapes and hard drives, and 107 boxes of film stored at GRM's Atlanta location (the "Company Records");
- (b) 2,042 boxes containing student records from campuses located in Indiana (the "Indiana Records");
- (c) 696 boxes containing student records from campuses located in Massachusetts (the "Massachusetts Records"); and
- (d) 7,906 boxes containing records from the Affiliated Debtors' corporate headquarters (the "HQ Records," and together with the Company Records, the Indiana Records, the Massachusetts Records, the "Remaining Records").

9. The Trustee has resolved the vast majority of the outstanding issues in these cases and continues to move forward to distribute funds to creditors and close these cases. As a result, the Trustee has determined, in the exercise of her business judgment, that the Remaining Records are no longer needed in connection with the administration of the Affiliated Debtors' bankruptcy estates and should be destroyed by GRM in an appropriate manner ensuring that all confidential information contained in the Remaining Records is protected. Attached and incorporated as **Exhibit 1** is GRM's agreement for the destruction of the Remaining Records (the "Destruction Agreement").

² On May 30, 2018, the Court entered its *Order (A) Approving a Settlement Between the Trustee and the Mediating States, (B) Approving a Settlement Between the Trustee and the Maryland Higher Education Commission and the Board of Governors of the University of North Carolina, (C) Approving the Destruction of Documents, and (D) Granting Related Relief* [Doc 2559], authorizing the Trustee to enter into a settlement agreement with certain state agencies and providing, in relevant part, for (a) transmission of digital transcripts stored in the IRIS system to states specified in the agreement, (b) the digitization of certain of the Physical Academic Records by GRM, primarily for states with campuses that opened prior to 1992, (c) the subsequent delivery of the digitized Physical Academic Records to the states, and (d) the destruction of the Physical Academic Records.

10. As outlined in more detail in the Destruction Agreement, GRM will begin destroying the Company Records in February 2023, with an estimated completion date of July 2023. After receiving approval from the Trustee, GRM will destroy the Indiana Records and Massachusetts Records in July 2023 and the HQ Records in September 2023.

11. Pursuant the Destruction Agreement, the total cost for the destruction of the Remaining Records is \$505,770.11. In addition, GRM will continue to charge the Affiliated Debtors' bankruptcy estates for monthly storage fees pursuant to the terms and conditions of the Trustee's original contract with GRM dated October 8, 2016 (the "Original Contract"); provided however, upon payment of GRM's invoice to be issued in February 2023, the Original Contract shall terminate, and no other charges or obligations shall be due under the terms of the Original Contract.

III. RELIEF REQUESTED

12. The Trustee requests entry of an order, pursuant to section 105 and 503 of the Bankruptcy Code, (a) authorizing the Trustee to enter into the Destruction Agreement and to direct GRM to destroy the Remaining Records in an appropriate manner, and (b) authorizing the Trustee to pay GRM the cost associated with the destruction of the Remaining Records in the amount of \$505,770.11 and directing that such payment shall be an administrative expense to be paid by the ITT bankruptcy estate.

IV. GROUNDS FOR GRANTING RELIEF

13. Section 105(a) of the Bankruptcy Code provides that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

14. In addition, pursuant to section 503(b)(1)(A) of the Bankruptcy Code, after notice and a hearing, the Court can allow administrative expenses for “the actual, necessary costs and expenses of preserving the estate.” A claim is entitled to administrative status when such claim (a) arises from a postpetition transaction with the estate, and (b) the consideration for such payment is supplied to and benefited the estate. *See In re Kent Plastics Corp.*, 183 B.R. 841, 847 (Bankr. S.D. Ind. 1995).

15. As the maintenance of the Remaining Records is no longer required, the Trustee has determined that now is the appropriate time to proceed with destroying the Remaining Records. The destruction of the Remaining Records will benefit the bankruptcy estates by eliminating the monthly administration costs associated with the ongoing maintenance of the Remaining Records and allow the Trustee to be one more step closer to closing these cases. Accordingly, payment to GRM for the destruction of the Remaining Records is warranted as an administrative expense of ITT’s bankruptcy estate.

V. NOTICE

16. Pursuant to the *Notice, Case Management and Administrative Procedures* (the “Case Management Procedures”) approved by the Court on October 4, 2016 [Doc 220], the Trustee will provide a copy of this motion, including exhibits, on the following (as defined in the Case Management Procedures): (a) the Core Group; (b) the Request for Notice List; and (c) the Appearance List.

17. The Trustee will file a separate hearing notice for this motion and will provide such hearing notice to: (a) the Core Group; (b) the Request for Notice List; (c) the Appearance List; (d) all 50 State Attorney General’s Offices; (e) all 50 State Boards of Higher Education, or

their readily ascertainable equivalent; and (f) Timothy Hartloff. In addition, the Trustee will post the hearing notice on the case website at: <https://omniagentsolutions.com/itt>.

WHEREFORE, the Trustee respectfully requests entry of an order, (i) authorizing the Trustee to enter into the Destruction Agreement and to direct GRM to destroy the Remaining Records in an appropriate manner, (ii) authorizing the Trustee to pay GRM the cost associated with the destruction of the Remaining Records in the amount of \$505,770.11 and directing that such payment shall be an administrative expense to be paid by the ITT bankruptcy estate, and (iii) granting the Trustee all other just and proper relief.

Respectfully submitted,

RUBIN & LEVIN, P.C.

By: /s/ Meredith R. Theisen

Meredith R. Theisen

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2023, a copy of the foregoing *Trustee's Motion for Authority to Destroy Records Maintained by GRM Information Management Services, LLC and to Approve Agreement for the Cost Associated with the Destruction* was filed electronically. Pursuant to Section IV.C.3(a) of the Case Management Procedures, notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on January 17, 2023, pursuant to Section IV.C.3(c) of the Case Management Procedures, a copy of the foregoing *Trustee's Motion for Authority to Destroy Records Maintained by GRM Information Management Services, LLC and to Approve Agreement for the Cost Associated with the Destruction* was emailed to the following:

CEC Red Run, LLC: Alan M. Grochal at agrochal@tydingslaw.com
SWRE Deal V Building, LLC: Paul Weiser at pweiser@buchalter.com
Tarrant County/Dallas County: Elizabeth Weller at dallas.bankruptcy@publicans.com
Northwest Natural Gas Company: Ashlee Minty at Ashlee.Minty@nwnatural.com
Solar Drive Business, LLC: Chris W. Halling at challing@hallingmeza.com
Market-Turk Company: Jordan A. Lavinsky at jlavinsky@hansonbridgett.com
Taxing Authority for Harris County, Texas: John P. Dillman at houston_bankruptcy@lgbs.com
Texas Comptroller of Public Accounts: Rachel Obaldo at rachel.obaldo@oag.texas.gov
Clear Creek Independent School District: Carl O. Sandin at csandin@pbfc.com
Synchrony Bank: Recovery Management Systems Corporation at claims@recoverycorp.com
Bexar County: Don Stecker at sanantonio.bankruptcy@publicans.com
SWRE Deal V Building, LLC: Nancy K. Swift at nswift@buchalter.com
TN Dept. of Revenue: Michael Willey at michael.willey@ag.tn.gov
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Travis County: Kay D. Brock at kay.brock@traviscountytexas.gov
Able Building Maintenance: Scott D. Fink at bronationalecf@weltman.com
Marathon Ventures, LLC: Daniel M. Karger at kargerlaw@gmail.com
Oklahoma County Treasurer: Tammy Jones at tammy.jones@oklahomacounty.org
JM Partners LLC: John Marshall at jmarshall@jmpartnersllc.com

/s/ Meredith R. Theisen
Meredith R. Theisen

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